



October 15, 2004

BY ELECTRONIC FILING

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Notification of Ex Parte*; WC Docket No. 04-313 and CC Docket No. 01-338

Dear Ms. Dortch:

On October 15 2004, David Benck, General Counsel of Momentum Telecom, Inc. ("Momentum"), and I conducted an ex parte meeting with Jessica Rosenworcel and Paul Margie of Commissioner Copps' office. During the meeting, we discussed the comments Momentum filed in the above-referenced proceedings, and we distributed the attached presentation, which served as talking points. If you have any questions, please feel free to contact me.

Sincerely,

Michael B. Hazzard
Counsel for Momentum Telecom, Inc.

cc: Jessica Rosenworcel (electronic mail)
Paul Margie (electronic mail)

ATTACHMENT

Momentum Telecom, Inc.

WC Docket No. 04-313

Momentum Telecom

- Founded in 1999
- Based in Birmingham, Alabama
- Over 150,000 customers in the Southeast
- Primarily focused on the residential telecommunications services market (“residential market”)
- Serves consumers using UNE-P

Market Definition

- The Commission should conduct an independent impairment analysis for the residential market
- Residential and business markets historically treated as separate
 - Different products
 - Different pricing
 - Different customer expectations
 - Different revenue opportunities
 - Different consumer protection standards

Impairment Most Extreme in the Residential Market

- Economic impairments
 - Enormous sunk cost of substantially duplicating the public switched telephone network
 - Material market share necessary to achieve economies of scale
 - Low incremental revenue opportunity
 - High customer churn

NO CARRIER HAS SUCCESSFULLY OVERCOME
THESE ECONOMIC IMPAIRMENTS IN THE
RESIDENTIAL MARKET

Impairment Most Extreme in the Residential Market

- Operational impairments
 - ILEC network built for a single provider
 - Extremely difficult and costly to access loops unbundled from switching
 - Fiber deployment exacerbates impairment, as loops cannot be unbundled at all

NO CARRIER HAS SUCCESSFULLY OVERCOME
THESE OPERATIONAL IMPAIRMENTS IN THE
RESIDENTIAL MARKET

Intermodal Products Are Not Viable Substitutes for POTS

- Intermodal “alternatives” are separate product markets
 - Cable telephony – bundled with cable television
 - VoIP – requires broadband connection
 - Wireless – “not yet suitable” because of quality issues; also often requires long-term contracts

Intermodal Products Are Not Viable Substitutes for POTS

- Intermodal alternatives provide materially less consumer protection
 - State commissions have no jurisdiction over wireless telephony and appear to have no jurisdiction over VoIP or cable telephony
 - No common carrier obligations apply
 - No service quality standards apply
- The BOCs should not be the only residential option that affords consumers traditional protection

At a Minimum, the Commission Should Ensure Compliance with 271

- Section 271 creates an independent obligation to provide UNE-P
- State commissions have jurisdiction over section 271 through section 252 authority over interconnection agreements
- This Commission should support state efforts to set just and reasonable rates under section 271
- Section 201 of the Act applies only to common carriers in their provision of interstate telecommunications services, not intrastate services

“[E]ven most Bells agree that
UNE-P should be available for
serving residential customers
everywhere”

-- Chairman Powell, Letter to Hon.
Fred Upton, June 15, 2001